Judgment Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 524 of 2001
(Old No. 3324 of 1984)

1. Charan, S/o Pyara Singh
2. Jaswant Singh alias Jssa Singh
   S/o Pyara Singh
   Both R/o Village Govindpur Jundalia
   P.S. Sitarganj, District Nainital ….. Appellants

Versus

State …….. Respondent

Smt. Pushpa Joshi, learned counsel for the appellants.
Shri Rajeev Mohan Birkhani, learned A.G.A. for the State.

Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (for brevity herein after referred as Cr.P.C.), is directed against the judgment and order dated 29.11.2004, passed by learned Additional Session Judge/Special Judge, Nainital, in Sessions Trial No. 160 of 1983, whereby each of the appellants Charan and Jaswant Singh, has been convicted under Section 307 of Indian Penal Code, 1860 (for brevity herein after referred as I.P.C.), and each one is sentenced to undergo rigorous imprisonment for five years and also to pay fine of Rs. 1,000/- in default of payment of which the defaulter has to undergo rigorous imprisonment for further period of one year.

2) Heard learned counsel for the parties and perused the record.

3) Prosecution story, in brief, is that P.W. 2 Subba Singh (injured) is resident of Village Govindpur, P.S. Sitarganj, District Nainital (now in District Udham Singh Nagar). Charan and Jaswant (both appellants) are his cousins. They were in litigation in respect of share in the land owned by them. On 22.08.1982, a panchayat took place to resolve the dispute. After the panchayat, P.W. 2 Subba Singh was sitting under a tree on a cot near his house. P.W. 3 Harcharan Singh, who had come to attend the Panchayat was also sitting near by Subba Singh. At about 4:00 P.M., accused/appellants Charan Singh and Jaswant Singh, armed with knives, came from one side and third accused Anoop Singh (acquitted by the trial court), came from the other side and to teach a lesson, the two appellants, started giving knife blows on the person of Subba Singh. Appellant Charan Singh, is said to have given blow to the injured from the front side while appellant Jaswant Singh, gave knife blow from the back of the injured. The injured raised alarm on which other witnesses also came at the spot and the accused persons fled from the scene of occurrence. P.W. 1 Joga Singh, son of the injured, arranged a trolley and took the injured immediately to the police station. He lodged First Information Report (Ext. A-1) and rushed from there to primary health centre, Sitargnaj for medical treatment of the injured. P.W. 4 Dr. H.S. Rawal, who examined Subba Singh, at about 7:25 P.M., considering the serious condition of the patient, referred him to the Civil Hospital, Haldwani. While P.W. 1 Joga Singh was taking the injured towards Haldwani, in the

midnight, his condition started worsening and he was taken to District Hospital, Bareilly. At about midnight, they reached there where injuries on the person of Subba Singh were recorded. P.W. 6 Dr. A.P. Singh, performed surgery on the injured on 23.08.1982 at about 9:00 A.M. and prepared a report (Ext. A-9). According to said Medical Officer, the injury on the vital part of Subba Singh was dangerous to his life. Meanwhile, P.W. 5 Sub-Inspector S.P. Singh, investigated the crime, interrogated witnesses, prepared side plan (Ext. A-6), took the blood stained soil and plain soil. On completion of the investigation, he submitted charge sheet (Ext. A-7) against the appellants and the third accused Anoop Singh.

4. On receipt of the charge sheet, it appears that the Magistrate concerned, after giving necessary copies to the accused persons, as required under Section 207 of Cr.P.C., committed the case for trial, to the Court of Sessions Judge. The Sessions Judge, appears to have transferred the case for trial to Additional Sessions Judge. The trial court, after hearing the prosecution and the defence, framed charge of offence, punishable under Section 307 I.P.C. against accused/appellants Charan Singh and Jaswant Singh, who pleaded not guilty and claimed to be tried. (Against accused Anoop Singh, charge of offence punishable under Section 307 I.P.C. was framed, how also pleaded not guilty). On this, prosecution got examined P.W. 1 Joga Singh (informant), P.W. 2 Subba Singh (injured), P.W. 3 Charan Singh alias Harcharan Singh (eyewitness), P.W.

4 Dr. H.S. Rawal (who medically examined the injured), P.W. 5 S.I. S.P. Singh (Investigating Officer) and P.W. 6 Dr. A.P. Singh (who performed surgery on the injured). The documentary and oral evidence was put to the accused persons under Section 313 of Cr.P.C. in reply to which they alleged that they have been falsely implicated in the crime. After hearing the parties, the trial court found accused/appellants Charan Singh and Jaswant Singh, guilty of offence punishable under Section 307 I.P.C. and after hearing on sentence, sentenced each of the convicts to rigorous imprisonment for a period of five years and also to pay fine of Rs. 1,000/- in default of payment of which it was directed that the defaulter shall undergo rigorous imprisonment for further period of one year. (Accused/appellant Anoop Singh was given benefit of doubt and acquitted of the charge of offence punishable under Section 307 I.P.C.). Both the convicts filed this appeal before Allahabad High Court in 1984 from where it has been received by transfer to this Court under Section 35 of U.P. Reorganisation Act, 2000, for it disposal.

5. Before further discussions, it is pertinent to mention here the injuries found on the person of injured Subba Singh (P.W. 2), recorded by Dr. C.P. Srivastava at about midnight in the intervening night of 22nd and 23rd of August 1982, which are recorded in Bed Head Ticket, as under:-

1. *Stab wound on the left side upper quadrant of abdomen with*

profusion of fatty membrane tissue.

2. *Incised wound 3.5cm X 1cm not probed, found unstitched on the right side of lower part in axillary line.*
3. *Incised wound 3.5 X 1cm X muscle deep on the right side upper part of hip joint, unstitched.*

6. P.W. 1 Joga Singh, S/o injured, who is eye witness of the occurrence, has stated on oath that on the date of the incident at about 4:00 P.M., his father Subba Singh was sitting on a cot under a tree on the South of his house when present appellants and accused Anoop Singh (acquitted by the trial court), came there. The witness further states that appellant Charan Stabbed Subba Singh from the front side and appellant Jaswant stabbed from behind. The witness has further narrated that he took his injured father in a tractor trolley to police station Sitarganj, lodged First Information Report (Ext. A-1) and took the injured to hospital at Sitarganj. P.W. 1 Jogi Singh further states that doctor at Sitarganj told him that condition of the patient is serious and he should be taken to Haldwani. The witness has alleged that the accused persons, committed the crime due to the enmity relating to land owned by the parties. P.W. 1 Joga Singh also witnessed the collection of blood stained soil and sample soil by the police in respect of which memo (Ext. A-2) was prepared. This witness has also stated that when he was

taking his father from Sitarganj to Haldwnai and near Pullbhatta on seeing that his father's condition further deteriorated, he took him immediately to District Hospital, Bareilly.

7. P.W. 2 Subba Singh is injured eye-witness, who has narrated the above mentioned prosecution story, corroborated what has been stated by his son. This witness has further stated that he remained admitted in District Hospital, Bareilly for 20-21 days. This witness has further explained that another eye-witness Harcharan Singh had come on that day to attend panchayat to resolve the dispute between the parties.

8. P.W. 3 Harcharan Singh, has corroborated the prosecution story, as narrated by P.W. 1 Joga Singh and P.W. 2 Subba Singh. This is an independent eye witness and his testimony is also natural and trustworthy.

9. P.W. 4 Dr. H.S. Rawal, who was posted in Sitarganj on 22.08.1982, has stated that Subba Singh, was brought to him in an injured condition and he observed stab wound on his person. Keeping in view the serious condition of the patient, this witness has stated that he immediately referred the injured to Haldwani. P.W. 6 Dr. A.P. Singh, has stated on oath that on 22.08.1982, at about midnight, injured Subba Singh was got admitted in District Hospital, Bareilly, where on next day he performed surgery on the wound of the injured. This witness has further proved the injury report, recorded by Dr. C.P. Srivastava, on the

bed head ticket at the time of admission, which is quoted above. According to this witness (P.W. 6 Dr. A.P. Singh), condition of the patient was so serious that there was danger to his life and surgical operation had to be performed.

10. Smt. Pushpa Joshi, learned counsel for the appellants, argued that there is unreasonable delay in lodging the First Information Report and as such, the prosecution story is after thought, implicating the appellants falsely. I am unable to accept this argument for the reason that the distance between the place of incident and police station is 8 Kms. The First Infromation Report was lodged soon after three hours of the incident. In the circumstances, the First Information Report cannot be said to be lodged after unreasonable delay.

11. Next submission advanced on behalf of the appellants is that there is no motive of commission of crime. In furtherance to this argument, she contended that prosecution witnesses have admitted that bigger share of land, owned by the parties had gone to the appellants and Anoop Singh, as such they could have no grudge to inflict the alleged injuries on the person of Subba Singh. I see little force in the submission for the reason that though the cause of enmity was the partition of land but the immediate cause, which appears to have enraged the appellants is that Subba Singh, got panchayat held to get the dispute settled and the appellants were not happy about it. That is why the

prosecution witness P.W. 1 has stated that when the appellants came there, third accused Anoop Singh (acquitted by the trial court) also came there with them and said "AAJ TUMHARA FAISLA KIYE DETE HAI"

12. It is also contended on behalf of the appellants that P.W. 4 Dr. H.S. Rawal, has observed only one stab wound while P.W. 6 Dr. A.P. Singh, states that Dr. C.P. Srivastava, recorded three injuries, quoted above on the bed head ticket. As such, the prosecution story is doubtful. Had there been no explanation of this contradiction, this Court would have given weight to it but P.W. 4 Dr. H.S. Rawal, has stated on oath that since the condition of the injured was serious, as such, he did not jot down all the injuries. Not only this, the above explanation is given in the examination in chief and in cross examination, also he has further stated that had he turned the patient a couple of time to record the injuries, there was likelihood of his death.

13. Lastly, it is argued on behalf of the appellants that site plan (Ext. A-6) does not disclose from which point the witnesses saw the commission of crime by the appellants. Ext. A-6 (site plan), shows place marked by 'X' under a tree where the incident had taken place and house of Subba Singh is also shown. As to the place from where the witnesses have seen the occurrence, is explained by the witnesses themselves. Merely for the reason that Investigation Officer, has not marked the place from where witnesses saw the incident, in the

opinion of this Court, it does not create any reasonable doubt in the prosecution story.

14. For the reasons, as discussed above, this Court does not find any reason to interfere with the impugned judgment and order, passed by the trial, convicting and sentencing the accused, as mentioned earlier. The appeal is liable to be dismissed. The same is dismissed. Conviction and sentence, passed by the trial court is maintained. Appellants are on bail. There bail is cancelled. The trail court concerned shall take the appellants into custody forthwith to make them serve out the sentence, awarded against them.

(Prafulla C. Pant, J.)

Dt. 19.10.2006
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